

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>96-60525</u>
AMERICAN STEEL PRODUCT, INC.)	
)	
Debtor)	
)	
)	FILED
INGLESBY, FALLIGANT, HORNE,)	at 8 O'clock & 50 min. A.M.
COURINGTON & NASH, P.C.)	Date: 7-1-97
)	
Movant)	
)	
vs.)	
)	
ANNE R. MOORE,)	
CHAPTER 7 TRUSTEE)	
)	
Respondent)	

ORDER

Pursuant to notice, hearing was held on the application for attorney's fees and expenses filed by Inglesby, Falligant, Horne, Courington & Nash, P.C. (hereinafter "Inglesby Firm"), attorneys for the debtor, filed pursuant to §§330 and 331 of Title 11 United States Code. At hearing, neither the then Chapter 11 Trustee, the case having subsequently been converted to a case under Chapter 7 with the same Trustee named, the United States Trustee

appearing through counsel, nor the United States of America acting by and through its agency the Internal Revenue Service appearing through counsel objected to the amount of the fee request of \$28,420.00, the expense reimbursement request of \$1,721.87 for a total of \$30,141.87, nor to the nature of the award pursuant to §330. The only issue raised by the Trustee was the application of a retainer in the amount of \$20,000.00 paid to the Ingelsby Firm by an unrelated third party with the understanding that the law firm would first seek compensation from the estate before application of the retainer. Following the close of the hearing, the matter of the application of the retainer was taken under advisement and an interim order was entered and filed December 20, 1996. The order provided in relevant part "[w]ithout ruling on whether applicants [Inglesby Firm] must look first to these funds [the retainer] for payment, this Court approves the applicant's fees in the amount of \$28,420.00 and expenses in the amount of \$1,721.87 for a total of \$30,141.87. The difference between \$30,141.87 and \$19,600.00 or \$10,541.87 shall be paid by the Trustee in the same manner as payment of other like administrative expenses. The Court reserves ruling on whether applicant's may seek the payment of the balance of their claim from the bankruptcy estate or whether they must look first to the \$19,600.00 retainer provided by Mr. McGregor." Subsequent to the entry of that order, I sua sponte requested that

parties in interest address the effects of the 1994 amendments to §330 of Title 11 United States Code to the application for compensation now under consideration.

The Inglesby Firm seeks allowance of its fees and expenses pursuant to §330(a) and the payment of those allowed fees and reimbursement of expenses as a Chapter 11 administrative expense priority under §503(b)(2). Bankruptcy Code §503 provides in part relevant to this proceeding:

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title [11], including - . . .

(2) compensation and reimbursement awarded under section 330(a) of this title [11]; . . .

Bankruptcy Code §330(a) provides in part relevant to this proceeding:

(a)(1)(A) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 -

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any

such person; and

(B) reimbursement for actual, necessary expenses. . . .

(4) (A) Except as provided in subparagraph (B), the court shall not allow compensation for

(i) unnecessary duplication of services; or

(ii) services that were not -
(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(B) In a Chapter 12 or Chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the **debtor's attorney for representing the interest of the debtor** in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and other factors set forth in this section (emphasis added)

Prior to the 1994 amendments, Bankruptcy Code §330(a) provided:

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 327, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, **or to the debtor's attorney-**

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of

such services, the time spent on such services,
and the cost of comparative services other than
in a case under this title; and
. . . (emphasis added)

Notably, Congress deleted from §330(a) the general authorization for payment of debtor's attorney's fees as an administrative expense, but specifically provided that in an individual's Chapter 12 or Chapter 13 the attorney may apply for compensation from the estate under §330(a)(4)(B). A plain reading of §330 bars compensation to debtor's counsel in a Chapter 7 or Chapter 11 case, See, In re Fassinger 191 B.R. 864 (Bankr. D. Oreg. 1996); In re Friedland 182 B.R. 576 (Bankr. D. Colo. 1995); In re Kinnemore 181 B.R. 520 (Bankr. D. Idaho 1995). Contra, In re ProSnax Distributors, Inc. 204 B.R. 492 (Bankr. N.D. Tex. 1996).

In ProSnax, a case with facts remarkably similar to the present case, the court recognized that under the pre-1994 amended Code, debtor's counsel was explicitly allowed compensation from estate assets. The Court noted that the revised language facially denied such compensation, but also found that the legislative history of the revision reflected no congressional intent to deny a Chapter 11 debtor's attorney compensation from the estate, and that this lack of legislative history displays congressional intent to maintain the status quo through the amendment. Id. at 495. However, the amended §330(a) is clear, not vague nor subject to

multiple interpretations, and thus the legislative history is not relevant to the provision's interpretation and application. United States v. Ron Pair Enterprises, Inc. 489 U.S. 235, 241, 109 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989) (Where the statute's language is plain, the sole function of the court is to enforce it according to its terms.) Additionally, legislative history aside, the plain language of §330 establishes an intent to limit compensation of debtor's counsel from estate assets to individual Chapter 12 and Chapter 13 cases. Nothing could be clearer. The Inglesby Firm's requested compensation does not qualify for administrative expense priority under the plain reading of §330(a). Their sole recourse is to the retainer paid.

It is therefore ORDERED that the order entered and filed December 20, 1996 allowing attorney's fees and expense reimbursement of \$30,141.87 as an administrative expense to the firm of Inglesby, Falligant, Horne, Courington & Nash, P.C. and authorizing the Trustee to disburse \$10,541.87 on the fee award is vacated; and

further ORDERED that the firm of Inglesby, Falligant, Horne, Courington & Nash, P.C. shall immediately reimburse to Anne Moore, now Chapter 7 Trustee in this case \$10,541.87.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 30th day of June, 1997.